

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 15,170

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Appeal of )

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INTRODUCTION

The petitioner appeals a decision by the Department of Social Welfare denying coverage under Medicaid for orthodontic work for her son. The issue is whether the petitioner's son's treatment plan qualifies for coverage under the Department's procedures.

FINDINGS OF FACT

The petitioner's son is twelve and receives dental coverage through the Medicaid program. Prior to February, 1997, they lived in New York. In August, 1996, the son began orthodontic treatment in that state. The work was covered by New York's Medicaid program.

The family moved to Vermont in February, 1997, and the petitioner applied to Vermont Medicaid to continue her son's orthodonture with a Vermont orthodontist. In support of her application, she provided a form prepared by Medicaid but filled out by her orthodontist on which he was to check whether any "major diagnostic criteria" (cleft palate, 2 impacted cuspids, or other severe crania-facial anomaly) or "minor criteria" (1 impacted cuspid, 2 blocked cuspids, 3 congenitally missing teeth per arch, anterior open bite 3 or more teeth, crowding per arch, anterior crossbite, traumatic deep bite impinging on palate or overjet) existed. The form informed the orthodontist that eligibility for orthodontic treatment required that the malocclusion be severe enough to meet a minimum of 1 of the major or 2 of the minor diagnosed treatment criteria listed on the form.

On the form the orthodontist checked only one box (anterior open bite 3 or more teeth). He also wrote on the form: "continue orthodontic treatment, patient started treatment in New York". The Department has agreed to pay for the removal of the petitioner's son's braces if the petitioner cannot afford to continue his orthodontic treatment on her own, but it has denied Medicaid coverage for continued treatment because the son's diagnosis does not meet the necessary criteria as set forth above. The petitioner presented no further evidence indicating that her son's diagnosis meets any of the other listed criteria.

ORDER

The decision of the Department is affirmed.

### REASONS

The Department has adopted regulations for the coverage of orthodontics in the Medicaid program which includes the following:

Coverage of orthodontic services is limited to Medicaid recipients under the age of 21. Payment will be made when services are provided in accordance with an approved plan of treatment. Approvals are granted for treatment periods of six months. Bills must be submitted and payments will be made consonant with approved six month periods. . . .

A partial, proportional payment will be made on behalf of a recipient who becomes newly eligible for Medicaid coverage while undergoing a course of orthodontic treatment which began before Medicaid eligibility. The orthodontic treatment plan must be approved by Medicaid.

#### M620.1

The Department uses written guidelines which allow approval for only those plans of treatment which meet either one of the major or two of the minor criteria as set forth in the above findings of fact. The petitioner does not argue either that her son meets those criteria or that the criteria are unreasonable or illegal. She maintains, however, that because her son received prior Medicaid approval in New York and was a year and a half into his treatment when they moved to Vermont, the Department should cover the remainder of her son's treatment, which the petitioner stated is expected to last another year.

It is concluded that the "approval" required by the above regulation refers solely to Vermont's Medicaid program. The hearing officer knows of no provision in the Medicaid statutes or regulations that requires a state to continue Medicaid coverage for any medical treatment that was started in and approved by another state with less stringent coverage criteria. It is unfortunate if the petitioner cannot afford to pay for her son's continued orthodonture, but there was no evidence presented that discontinuance of treatment (if this is what will happen) poses any medical risk to him. Inasmuch as the Department's decision is in accord with its regulation, it must be upheld. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

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